

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

74- [REDACTED]

UNITED STATES COURT OF APPEALS

for the
SECOND CIRCUIT

1207

Docket No. 74- [REDACTED] 1207

B
PMS

UNITED STATES OF AMERICA,

Appellee,

-against-

JOHN DURKIN

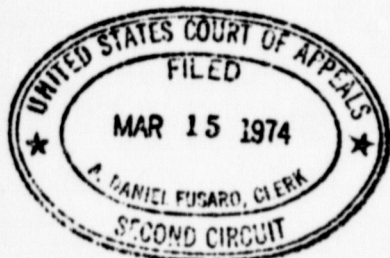
Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION OF THE
UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

APPENDIX FOR DEFENDANT-APPELLANT

GEORGE E. GOLDSTEIN
Counsel for Appellant
Office and Post Office Address
327 South 17th Street
Philadelphia, Pennsylvania 19103
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HON. PAUL CURRAN
U.S. Attorney
Attorney for Appellee
Foley Square
New York, New York



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DATE	PROCEEDINGS
10-1-73	Filed indictment.
10-15-73	Both defts.(attys. present) Plead not guilty. Deft. Murray continued \$30,000. secured by \$3,000. and Durkin continued \$15,000. secured by \$3,000. Case assigned to Judge Pollack for all pruposes. MacMahon, J.
0-24-73	Filed notice of entry of appearance of atty for debt John Durkin, by Steven Hyman, 370 Lex Av, NYC 10017 725-5970.
0-24-73	Filed notice of entry of appearance of atty for debt John Durkin, by Rovert M. Rosenblum 327 S.17th St, Philadephia, Penn 985-1125.

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
10-24-73	Filed deft John Durkin's notice of motion re: bill of particulars, discovery & inspection, suppression, etc. ret: Nov 1973.		
0-24-73	Filed deft Murray's notice of motion re: suppression of evidence ret: no date.		
0-24-73	Filed deft Murray's notice of motion re: bill of particulars.		
0-29-73	Filed MEMO-END. on motion dtd 10-24-73 re: bill of particulars, Motion to be heard on 11-14-73 at 10 AM. Pollack, J. mn		
10-29-73	Filed MEMO-END. on motion dtd 10-24-73 re: suppression, Motion to be heard on 11-14-73. Pollack, J.		
11-26-73	Filed MEMO-END. on motion dtd 10-24-73 re: suppression, Motion to suppress is denied. There was probable cause for the warrantless arrest and search of the bag which Durkin was carrying and had with him at the time of the arrest. Pollack, J. mn		
11-26-73	Filed MEMO-END. on motion dtd 10-24-73 re: bill of particulars, Motion mooted by voluntary disclosure. Pollack, J. mn		
11-26-73	Filed MEMO-END. on motion dtd 10-24-73 re: suppression, etc. Motion to suppress is denied. other motions have been taken care of by voluntary disclosure and need not be passed on any longer. Pollack, J. mn		
11-26-73	Filed Govt's memo of law. in opposition to motion for suppression.		
11-26-73	John. Durkin- filed deft's acknowledgment of constitutional rights.		
11-26-73	BOTH DEFTS- Suppression hearing held and concluded. Motions to suppress are denied. Case called for Trial. Deft J. Durkin (atty present) Now Pleads Guilty. Pre-sentence report ordered. For sentence 1-17-74 at 10 AM. Bail cont'd. Pollack, J.		
11-26-73	Charles Murray- Jury trial begun before Judge Pollack.		
11-27-73	Trial cont'd and concluded. Jury verdict. Deft C. Murray found not guilty. Deft is discharged and bail is exonerated. Pollack, J.		
1-17-74	JOHN DURKIN- Filed JUDGMENT (atty present) Deft is hereby committed to the custody of the Atty General or his authorized representative for imprisonment for a period of THREE (3) MONTHS, on Count 1. Pursuant to the provisions of T. 21, I.S. Code, Sec. 841, the deft placed on Special Parole for a period of TWO (2) YEARS to commence expiration of confinement. Imposition of sentence on count 2 is suspended. Deft is placed on Probation for a period of TWO (2) YEARS subject to the standing probation order of this Court. Probation is to run concurrently with the period of Special Parole provided for under Count 1. Deft is cont'd on present bail pending appeal with consent of the Govt on condition that the appeal be filed promptly and forthwith. Pollack, J.		
	1-18-74 Issued commitments.		

Judge Pollack

DATE _____

1/17/74	Final
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A-3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :

-v- :

CHARLES MURRAY, and :
JOHN DURKIN, :

Defendants. :
-----X

INDICTMENT

73 Cr. 125-671

The Grand Jury charges:

1. From on or about the 6th day of August, 1973, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, CHARLES MURRAY, and JOHN DURKIN, the defendants, and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(B) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute a Schedule I controlled substance the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(B) of Title 21, United States Code.

A-4

SA-338-538 - p.2 - IND./INF. (Conspiracy to distribute and possess with intent to distribute narcotic drug.)
d. 5/1/71

RE:ka

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about August 14, 1973, the defendant, CHARLES MURRAY drove an automobile to the vicinity of Pennsylvania Station, New York, New York.

2. On or about August 14, 1973, the defendants, CHARLES MURRAY and JOHN DURKIN met in the vicinity of Pennsylvania Station, New York, New York.

3. On or about August 14, 1973, the defendant JOHN DURKIN placed a leather satchel in an automobile operated by the defendant, CHARLES MURRAY in the vicinity of Pennsylvania Station, New York, New York.

(Title 21, United States Code, Section 846.)

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COUNT TWO

The Grand Jury further charges:

On or about the 14th day of August, 1973, in the Southern District of New York, CHARLES MURRAY and JOHN DURKIN, the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule I controlled substance, to wit, approximately 3600 grams of marihuana.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B) and Title 18, United States Code, Section 2.)

Foreman

PAUL J. CURRAN
United States Attorney

A-6

GX 3502 - 1D

DEFENDANT'S

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.

C *ml*

NOV 26 1973

→ Reliable
Had made 3 cases before that - w/ 6 As.
2 seizures - cocaine -

Since then - has made several cases

A-7

Approved:

~~David H. Marshall~~
Assistant United States Attorney

Before:

HONORABLE
~~Ed. Scheraga~~
United States Magistrate,
Southern District of New York.

UNITED STATES OF AMERICA

COMPLAINT

-v-

**CHARLES MURRAY, and
JOHN CURKIN**

Violation of
21 U.S.C. §§ 812;
841(a)(1), 841(b)(1)(A)
and 846.

Defendant.

SOUTHERN DISTRICT OF NEW YORK, ss.:

JOSEPH SULLIVAN, being duly sworn,
deposes and says that he is a Special Agent with the
Drug Enforcement Administration,
and alleges and charges as follows:

1. From on or about the ~~6th~~ day of ~~August~~
1973 and continuously thereafter up to and including
the date of the filing of this complaint, in the Southern
District of New York, **CHARLES MURRAY and JOHN CURKIN,**

the defendant, and others unknown, unlawfully, intention-
ally and knowingly combined, conspired, confederated and
agreed together and with each other to violate Sections
812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States
Code.

2. It was part of said conspiracy that the said
defendant, unlawfully, intentionally and knowingly would
distribute and possess with intent to distribute Schedule
I and II narcotic drug controlled substances the exact
amount thereof being unknown in violation of Sections 812,
841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

DEFENDANTS

EXHIBIT

U. S. Dist. Court
S. D. of N. Y.

73
NOV 26 1973

A-8

OVERT ACTS

1. In pursuance of the said conspiracy and to effect the objects thereof, on or about the 14th day of August, 1973, in the Southern District of New York,

A. The defendant CHARLES MURRAY drove to Pennsylvania Station.

B. The defendant JOHN DURKIN detrained at Pennsylvania Station, and got into the car which defendant CHARLES MURRAY had driven to the Station, and in which car defendant CHARLES MURRAY was waiting.

The sources of deponent's information and the grounds of his belief are investigations conducted by him in the course of his official duties, including:

1. Reports received from a confidential informant, whose information and reliability have been demonstrated on a number of prior occasions, to the effect that CHARLES MURRAY was to sell him a quantity of hashish, and that MURRAY's connection was arriving with the hashish at Pennsylvania Station;

2. Surveillance by myself and other agents of the defendant MURRAY driving to Pennsylvania Station, waiting there, and then driving off after defendant DURKIN entered the car.

3. Recovery of approximately ten pounds of hashish from a leather satchel which defendant DURKIN had placed in the car driven by defendant MURRAY.

WHEREFORE, deponent prays that a warrant may issue for the apprehension of the above named defendant and that they may be arrested and imprisoned, or bailed, as the case may be.

Sworn to before me this

15th

day of August 1973,

Joseph C. Sullivan
JOSEPH C. SULLIVAN

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X

4 UNITED STATES OF AMERICA :

5 vs. :

6 CHARLES MURRAY and : 73 Cr. 925
7 JOHN DURKIN :

8 Defendants. :
9 -----X

10 Before:

11 HON. MILTON POLLACK,

12 District Judge

13 New York, N. Y.
14 November 26, 1973 - 10:00a.m.

15 APPEARANCES:

16 PAUL J. CURRAN, Esq.
17 United States Attorney
18 For the Government
19 BY: ROBERT B. HENLEY, Esq.
20 Assistant United States Attorney

21 ALVIN GELLER, Esq.
22 Attorney for Defendant Charles Murray

23 GEORGE GOLDSTEIN, Esq.
24 Attorney for Defendant John Durkin
25

A-10

THE CLERK: United States versus Murray and Durkin.

MR. HEMLEY: The government is ready.

MR. GELLER: The defendant Murray is ready, your Honor.

MR. GOLDSTEIN: The defendant Durkin is ready, your Honor.

THE COURT: Go ahead, gentlemen.

MR. HEMLEY: I believe there is an application for a motion by the defendants pending, your Honor.

MR. GELLER: I think it was discussed at our conference, your Honor. Each counsel brought a motion to suppress the evidence which is the subject matter of this indictment, namely the 3600 grams of marijuana, and I think your Honor set it down for a pre-trial hearing, an evidentiary hearing prior to the trial, if one is necessary.

THE COURT: All right. We will proceed with that hearing.

MR. HEMLEY: The government calls Agent Jeffrey Hall.

J E F F R E Y P. H A L L, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

JQS

BY MR. HEMLEY:

Q How are you employed?

A Special Agent with the United States Department of Justice, Drug Enforcement Administration.

Q How long have you been employed?

A 5-1/2 years.

Q In the course of your employment have you come to know two individuals by the name of Charles Murray and John Durkin?

A Yes sir.

Q Would you point them out please?

A Yes sir, this is Murray sitting here in the tan coat and this is Durkin sitting here at the table with the dark suit on.

MR. HEMLEY: May the record reflect identification of the two defendants, Charles Murray and John Durkin.

Q Were you employed on your official duties on August 14, 1973?

A Yes sir.

Q On that day at approximately 3 p. m. did you have a conversation with a registered informant of the Drug Enforcement Administration?

A Yes sir, I did.

Q Prior to that conversation with the informant had

1 you had any previous contact with the informant?

2 A Yes, I had.

3 Q Would you describe the nature of the contact you
4 had with the informant prior to the conversation on August
5 14, 1973?

6 A Prior to that time I had had numerous occasions
7 to speak with the informant and to deal with the informant.

8 Q Had you been involved in any narcotics cases
9 with the informant?

10 A Yes sir, I had.

11 Q How many?

12 A One previous case.

13 Q Approximately how long had you known the informant
14 by August 14, 1973?

15 A Approximately two weeks to a month.

16 Q Had the informant given you any information prior
17 to August 14?

18 A Yes, he had.

19 Q If you can identify that information simply by
20 referring to them as tips, would you give us an idea of how
21 many of the tips that you received from this informant were
22 reliable prior to your conversation with him on August 14,
23 1973?

24 A Prior to that time he had supplied me with
25

1 information on about 7 or 8 occasions, all of which turned
2 out to be accurate after I checked them out.
3

4 Q By August 18 or rather August 14, 1973
5 had you drawn an opinion as to the reliability of the
6 informant with whom you spoke on August 14, 1973?

7 A Yes sir, I had.

8 Q What was that opinion?

9 A I judged him to be absolutely reliable.

10 Q Referring back to the conversation of August 14
11 what was the content of that conversation?

12 A The informant told me that he had recently met
13 a man known to him as Charlie and that Charlie had offered
14 to sell him 100 pounds of hashish.

15 Q Was there anything else said in that conversation?

16 A Yes. He told me that this man known to him as
17 Charlie was going to come to his house that afternoon at 4
18 o'clock and that he was going to be driving a yellow Volks-
19 wagen and he supplied me with a physical description of
20 this man known as Charlie.

21 Q Did he supply you with any additional informa-
22 tion concerning the Volkswagen?

23 A Yes, he gave me the license number.

24 Q Did he give you any other information?

25 A Yes. I believe he told me the price that the

man named Charlie was going to charge for the hashish but I don't recall at this time exactly how much the price was.

Q Have you later come to know who this man Charlie of whom the informant was making reference is?

A Yes, I have.

Q Who is that?

A Charles Murray.

Q What did you do after you received the telephone call from the informant?

A I instructed two agents in our office to proceed to the informant's residence where Murray was supposed to show up at 4 o'clock.

Q Did you make any checks of the license plate number of the Volkswagen?

A Yes, I did.

Q What were the results of that check?

A It was listed to Murray's wife, Patricia Murray.

Q Did you made any checks with respect to any telephone number?

A Yes, I did.

Q What telephone number was that?

A Well --

Q Where did you obtain the telephone number that you checked out?

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Hall-Direct

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A I obtained the telephone number from the informant.

Q In what context did the informant tell you about the telephone number?

A He said this was the number where he was in contact with Murray and Murray's wife.

Q What was the result of the check on the telephone number?

A The telephone company supplied me with subscriber information which came back to Charles Murray.

Q Do you recall who the two agents that you dispatched to the informant's house on the afternoon of August 14, '73 were?

A Agent Mitchell was one and I believe the other was Agent Magnuson.

Q Did there come a time later in the afternoon of August 14 when either Agent Mitchell or Agent Magnuson reported to you about their activities after you had dispatched them?

A Yes. I received information from the base radio that the agents had arrived at the location where they expected Murray to arrive and the information was that at approximately ten minutes to four on that day there was a yellow Volkswagen sitting in front of the informant's

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Hall-Direct

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residence. Later that same afternoon I think it was about 4:15 or 4:30 I received a direct message from one of those two agents. I don't recall which one, who told me that they had seen a man fitting the description given by the informant, the description of Murray, exiting the informant's residence, enter the Volkswagen and drive from the area and they attempted to follow but there was rush hour traffic at that time and they did lose him in the traffic.

Q Directing your attention to approximately 4:30 in the afternoon of August 14 did you have a second telephone conversation with the informant?

A Yes, I did.

Q What was the content of that telephone conversation?

A This phone call that I received from the informant was I believe 4:15 that afternoon, he told me that Murray had just left his house, that they had made plans for a 100 pound delivery of hashish that evening. The informant told me that Murray had told him that his connection was going to arrive in town by train that evening at 8:30 p. m. and that he, Murray, was going to pick him up at the train station then he was going to contact the informant and make final plans on the delivery.

Q After that telephone conversation did you have any

1 further contact with the informant during the afternoon and
2 early evening?
3

4 A Yes, I did. I spoke with the informant several
5 times by telephone. I don't remember how many times but
6 as he would acquire more information as to the specific
7 times and any more information about the delivery of the
8 drugs, he would relate the information to me at the office.

9 Q Directing your attention to approximately 8:15
10 in the evening of August 14, 1973 what if anything happened?

11 A Myself and several other agents went to the Penn
12 Station, the train station in an attempt to locate Murray's
13 car. As I arrived at the station I received word by radio
14 from Agent Lightcap that he had located Murray's car and
15 he --

16 Q Did he describe the vehicle?

17 A Yes, he did.

18 Q How did he describe it?

19 A He described the yellow Volkswagen and gave the
20 license number and I knew the car to be the same car that
21 had been over at the informant's house that afternoon.
22 Then I myself drove past the car. I saw Murray sitting in
23 the car. The car was parked in between the two buildings.
24 I don't know the names of the buildings but there is a
25 driveway that runs through the buildings at Penn Station

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Hall-Direct

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and his car was parked right outside the door in the driveway there where the taxis stand.

Q What further observations if any did you make that evening?

A At about 8:40 p. m. that evening I observed John Durkin walk out of the train station. He was carrying a suitcase and he was carrying a guitar case. He walked right to the car. He opened up the passenger door, placed the suitcase on the floor in the back seat and placed the guitar case in the car and then he got into the car. The car moved away from that area and several blocks away from the station, I don't remember the exact street, I believe it was 33rd and 9th Ave. somewhere in that area, we stopped the car in which Murray and Durkin was in and we arrested them.

Q What took place at the time of the arrest?

A Myself and Agent Lightcap placed these two defendants here under arrest and we advised them of their constitutional rights and Agent Cremin took custody of the suitcase that Durkin had been carrying and he opened the suitcase up and seized drugs and money from the suitcase.

Q Were the individuals themselves searched at any time?

A Yes, they were.

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jqs

Hall-Direct

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Q Was anything found upon the individual Charles Murray?

A Yes, there was.

Q What was that?

A Approximately \$2,000 at the New York Regional Office.

Q When you refer to the drugs, are you referring to approximately 3600 grams of marijuana that is the subject of this indictment?

A Yes sir.

MR. HEMLEY: No further questions.

CROSS-EXAMINATION

BY MR. GELLER:

Q Do you recall where the money was that you say Mr. Murray had, Agent Hall?

A Yes sir.

Q Where was it?

A In his sock, I believe.

Q Underneath the shoe?

A Agent Cremin made the seizure of the money.

Q Did you see the money that was seized from Mr. Murray?

A Yes sir.

Q Where was the money on his person when it was

2 seized?

3 A I recall him taking it out of his sock, I believe.
4 It was either out of his shoe or his sock.

5 Q That was in the automobile?

6 A That was in the office.

7 Q In the office?

8 A Yes sir.

9 Q Agent Hall, do you know the name of this infor-
10 mant?

11 A Yes, I do.

12 Q What is his name?

13 MR. HEMLEY: I object, your Honor.

14 THE COURT: On what ground?

15 MR. HEMLEY: On the ground that the identity of
16 the informant is not relevant to the Suppression Hearing.
17 If this case should go to trial subsequent to the
18 Suppression Hearing I will of course disclose the name of
19 the informant at that time.

20 MR. GELLER: I think it is quite relevant that
21 defense counsel have an opportunity to learn the identity
22 of this informant. We may wish to speak to him. We may
23 want to have his identity disclosed.

24 THE COURT: You mean for the purpose of this
25 hearing?

1 MR. GELLER: Yes sir.

2 THE COURT: What difference does it make for the
3 purpose of this hearing?

4 MR. GELLER: I think I have a right to question
5 this informant whether or not he told Agent Hall the com-
6 munications that Agent Hall told your Honor he received
7 It may turn out that the informant said none of these
8 things and that what Agent Hall is testifying to may not
9 be true.

10 THE COURT: Are you expecting to ask for a con-
11 tinuance here?

12 MR. GELLER: Well, your Honor, if it turns out
13 -- not for a continuance, Judge. I may expect --

14 THE COURT: How are you going to question this
15 informant if you don't get a continuance?

16 MR. GELLER: By calling him as a witness.

17 THE COURT: Where is he?

18 MR. GELLER: My understanding is that he is in
19 the building. He is a government witness and I have reason
20 to believe that he is somewhere within 50 feet of the
21 courtroom.

22 MR. HEMLEY: If after questioning Agent Hall the
23 defendant in good faith feels it is necessary to learn the
24 identity of the informant and if he offers a good faith
25

2 statement to the effect that he will in fact question
3 this informant, then the government will disclose his
4 identity. However, until there is such a showing the gov-
5 ernment objects to any disclosure of the identity at this
6 time.

7 THE COURT: Mr. Geller, I think we can go on
8 without prejudice to any of your rights, if any, by just
9 holding this question in reserve for the moment.

10 MR. GELLER: Agent Hall, you testified that you
11 knew this informant for a period of two weeks to a month?

12 A At least that long.

13 Q That would be as of August 14, 1973?

14 A Yes sir. It was at least that long. I don't
15 recall the exact date that I met the informant.

16 Q This informant, sir, is it not a fact that he
17 had a federal narcotic case pending against him?

18 A Yes sir.

19 Q And that case was pending in the District Court
20 in Florida?

21 A That is correct.

22 Q In that case what was he charged with?

23 A He was charged with possession of cocaine.

24 Q Did you arrest him in that case?

25 A No, I did not.

1 Q Was it after his arrest in that case that he be-
2 came an informant?
3

4 A Yes, it was.

5 Q Is it not a fair statement, sir, that he got
6 arrested in Florida on August 1 of 1973?

7 A I don't remember the date but that very well
8 could be.

9 Q I tell you now that that is the date that the
10 U. S. Attorney has given me as the date of the arrest of
11 the informant.

12 A That very well could be the date but I don't
13 know.

14 Q Is it a fair statement that you met the infor-
15 mant subsequent to his arrest?

16 A Yes.

17 Q As of August 14, the longest period of time that
18 you could have known him was two weeks?

19 A Yes, I met him on the day or the day after he
20 was arrested, so it was about two weeks.

21 Q So when you said just a moment ago that it could
22 be longer than a month, it was incorrect?

23 A When I said two weeks to a month, that was cor-
24 rect.

25 Q Where did you meet him for the first time?

A The New York Regional Office.

Q That was a day or two after his arrest in Florida?

A Either on the same day or the day after his arrest.

Q From August 1 until August 14, prior to the Murray arrest, you say this informant gave you information on various occasions?

A Yes, he did.

Q As of August 14 had you arrested any individuals based on that information?

A Yes sir.

Q Other than Charles Murray?

A Yes sir.

Q How many other individuals?

A One other individual.

Q What is that person's name?

MR. HEMLEY: Objection.

THE COURT: Sustained.

MR. GELLER: Did that arrest lead to a conviction?

A He has not gone to trial yet.

Q In other words, as of August 14, the information given by your so-called reliable informant led to one arrest? And that one arrest is still pending, correct?

A Yes sir.

Q How often did you meet with your client from August 1, until August 14?

A I met with him approximately five times.

Q During those five times did he give you information regarding various situations involving drugs?

A Yes, he did.

Q But based on those situations from August 1 to August 14 you made one arrest?

A That is correct.

Q Do you know if this informant was a drug addict as of August 14?

A No, not to my knowledge.

Q Was he using cocaine?

A Not to my knowledge.

Q Did you ever question him about his drug background?

A Yes, I believe I did.

Q Did he admit using various forms of narcotic drugs?

A I know he admitted smoking marijuana.

Q Didn't he admit blowing cocaine?

A I don't think he admitted that, no.

Q Did you ever ask him that?

A I don't recall.

1 Q Has your informant had any convictions for
2 criminal cases other than the one case where he was arres-
3 ted in Florida?
4

5 A I don't believe so.

6 Q Was the informant paid any money for the informa-
7 tion that he gave your office?

8 A Which information, sir?

9 Q Regarding narcotic drugs. Was he paid for his
10 information?

11 A Well, I would like to know which information
12 you are talking about.

13 Q Information that he gave you that resulted to
14 your working in the field of enforcing --

15 MR. HEMLEY: Could we have a time fixed on that.
16 Prior to August 14?

17 MR. GELLER: Prior to August 14 had he received
18 any money?

19 A No.

20 Q Has he received money since August 14?

21 A Yes, he has.

22 MR. HEMLEY: I object and ask that it be
23 stricken, it's irrelevant.

24 THE COURT: I will let it stand.

25 MR. GELLER: You say there came a time on August

14 when you received a phone call from the informant?

A Yes sir.

Q Were you in your office when you received the phone call?

A Yes sir.

Q About what time was that?

A 3 o'clock.

Q What did the informant tell you?

A He told me that he had met a man named Charlie. This man had been introduced to him by a girl.

Q Did he tell you the girl's name?

A Yes.

Q What is the girl's name?

A Billie.

Q Do you know the girl's full name?

A Yes.

Q What is her full name?

A Cynthia Shannon.

Q Did he tell you this girl was present when he met Charlie?

A I don't remember if he said she was present. I believe he did say that though.

Q He said Charlie offered to sell him marijuana?

A 100 pounds of hashish.

1 Q What else did he tell you, that Charlie would be
2
3 back at 4 o'clock?

4 A Yes.

5 Q Then did you actually go the your informant's
6 residence? Did you go there at 4 o'clock and make the sur-
7 veillance?

8 A Two other agents from my office went there.

9 Q And those agents reported to you?

10 A Yes.

11 Q And they told you they saw Murray get into a
12 yellow Volkswagen?

13 A Yes.

14 Q Did they tell you they saw a girl get into that
15 Volkswagen too?

16 A No.

17 Q Did they mention anything to you about the girl
18 named Billie?

19 A No.

20 Q And your information was that Murray was going
21 to sell 100 pounds of hashish to your informant?

22 A That is correct.

23 Q Incidentally, as of August 14 had you ever seen
24 Charles Murray in your life?

25 A No sir.

Q And the first time you saw him was that night at about 8:30?

A Yes sir.

Q Had you ever heard the name Charles Murray prior to August 14?

A Yes.

Q When did you hear the name Charles Murray for the first time?

A I heard the name Charles Murray regarding another case.

Q Had you ever seen Mr. Murray?

A No, I had not.

Q When you approached Mr. Murray did you have a search warrant for his arrest or to search his person?

A No, I did not.

Q Did you have a search warrant to search his automobile?

A No sir.

Q Did you have a warrant of arrest to arrest either Mr. Murray or Durkin?

A No sir.

Q You say there came a time when you saw John Durkin get into Murray's car?

A Yes sir.

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Q Where did Mr. Durkin sit?

A Passenger seat.

Q You say Mr. Durkin has a guitar and some sort of luggage with him?

A Yes sir.

Q Would you describe the luggage?

A I believe it was a medium sized leather suitcase although I don't recall exactly.

Q Did you seize that leather suitcase?

A Personally, no.

Q Was that leather suitcase seized by one of your fellow agents?

A Yes sir.

Q Is it in the possession of the government now?

A Yes sir.

Q Is it not a fact that that leather suitcase could not hold 100 pounds of anything?

A I imagine it could hold close to 100 pounds of hash.

Q Did you test it?

A Excuse me?

Q Did you make any effort to determine how much weight that suitcase could hold?

A No sir.

Q How about the guitar, was that capable of holding 100 pounds, the case?

A Certainly together they would have been able to hold 100 pounds.

Q As Mr. Durkin was walking in the street with the guitar and the suitcase was he straining in any way?

A It is difficult to tell if someone is straining really.

Q Sir, as an experienced officer was it your impression that Mr. Durkin was making some sort of great physical effort to carry the suitcase and the guitar?

A Carrying the suitcase, as I said, it's very difficult to tell because if you have 50 pounds in your left hand and 50 pounds in your right hand they balance each other out and it's hard to tell.

Q When Mr. Durkin got into Murray's car did Mr. Murray have to assist him and take one of the packages?

A I don't believe so.

Q Where did Durkin put the suitcase?

A I believe he put it on the floor.

Q In the back seat?

A Yes sir.

Q Where did Mr. Durkin put the guitar case?

I believe the guitar case was on the back seat. I am not

sure about that.

Q And Mr. Durkin sat in the front of the car?

A Yes sir.

Q You say the vehicle was proceeding west?

A Correct.

Q And at that time the agents converged and made the arrest?

A That is correct.

Q That was the first time that you ever saw Charles Murray?

A This evening was the first time, yes sir.

Q After you took Mr. Murray and Mr. Durkin into custody you took control of the suitcase and you took control of the guitar case, correct?

A Agent Cremin did.

Q At that point did any of the agents make an attempt to get a search warrant which would authorize to search either the suitcase or the guitar or the automobile?

A No sir.

Q In fact, is it not a fair statement that according to the government, according to you, apparently 7 pounds of hashish was recovered?

A 3600 grams.

Q Wouldn't that be approximately 7 pounds?

1 A I am not sure. I would have to figure it out.

2 Q 1,000 grams is 2.2 pounds, correct?

3 A Do you want me to figure it out? I can if you
4 want.

5 Q Isn't it clear that 3600 grams is about --

6 A I am not a mathematician.

7 Q How many pounds do you think it is?

8 MR. HEMLEY: I object, your Honor.

9 THE COURT: How many pounds is it, Mr. Geller,
10 do you know?

11 MR. GELLER: Approximately 7 pounds.

12 MR. HEMLEY: It is approximately 8 pounds, your
13 Honor.

14 THE COURT: Your arithmetic is slightly off, Mr.
15 Geller.

16 MR. GELLER: Where exactly was this hash found?

17 A It was in the back, in the suitcase.

18 Q Did you ever see Mr. Murray physically possess
19 that bag or suitcase?

20 A No sir.

21 Q Did you find any drugs on Mr. Murray's person?

22 A No sir.

23 Q Did you find any drugs in the automobile other
24 than the hash that you have told us about?
25

1 A No sir. I don't believe so.

2 Q Just one other point, Agent Hall, as I understand
3 your testimony you said at one point your informant told
4 you that he expected to receive a phone call from Mr.
5 Murray regarding the delivery of the hash that night?
6

7 A At one point he told me this, yes.

8 Q What time did he tell you that?

9 A I don't remember. I received several phone calls
10 from the informant between the time that Murray left his
11 house that day and when Murray left his apartment to go to
12 the train station.

13 Q After Murray left the apartment at about 4 o'clock
14 didn't you receive phone calls from your informant from
15 between 4 o'clock and the time of the arrest which was
16 about 8:30?

17 A Yes.

18 Q Didn't your informant tell you that he, the infor-
19 mant was awaiting word from Murray as to where the deli-
20 very would take place? Didn't you tell us that on direct?

21 A No, I don't think -- I think what I said was
22 that the informant was going to advise me as to anymore
23 specific details or anything further that he might hear from
24 Murray as he came in contact with Murray.

25 Q Where was the delivery to take place?

A At a Holiday Inn Motel on West 37th Street.

Q Who told you that?

A The informant did.

Q He told you that at about 4:30? Withdrawn. What time did he tell you that?

A Sometime between those two periods when Murray left his own apartment.

Q Where were you when you received that call?

A At the office.

MR. GELLER: No further questions.

CROSS EXAMINATION

BY MR. GOLDSTEIN:

Q On how many prior occasions did you have contact with the informant?

A Prior to what?

Q The 14th of August.

A 15 or 20 if you are including phone calls.

Q And he gave you information on 7 or 8 of those occasions, is that correct?

A Yes sir.

Q And they proved to be accurate?

A Yes.

Q And you had made how many arrests prior to August 14 as a result of this information?

1 jqs
2 A One.

3 Q What was seized in that case?

4 A Approximately 40 kilos of cocaine.

5 Q Do you recall giving a memorandum to the U. S.
6 Attorney that the informant had made three cases before this
7 with two seizures of cocaine?

8 A Would you repeat that?

9 Q Do you recall giving a memorandum or advising
10 the U. S. Attorney that this informant had made three
11 cases before that which involved two seizures of cocaine?

12 A No, not prior to that time. I may have told the
13 assistant U. S. attorney that he made that many cases all
14 together.

15 Q How many defendants were involved in the case
16 that he made prior to August 14?

17 A How many defendants were involved or how many
18 were arrested?

19 Q How many defendants were involved?

20 A There were four defendants involved.

21 Q How many were arrested?

22 A Thus far only one has been arrested.

23 Q Do you recall telling the U. S. Attorney that
24 this reliable informant had made three cases before August
25 14 with six defendants and two seizures of cocaine?

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jqs

Hall-Cross

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A No sir, I don't.

Q Has he made any cases since?

A Yes, he has.

Q How many?

MR. HEMLEY: I object.

MR. HALL: The statistic you just gave sounds about right. I think that is probably what I told the attorney.

Q He made a total of three cases?

A Three or four cases.

Q You have not told the U. S. Attorney that since that time he has made several cases in addition to three cases with six defendants?

A I don't believe so. I think that might have been a misunderstanding.

Q He came to you subsequent to his arrest in an effort to help himself, is that correct?

MR. HEMLEY: Objection.

THE COURT: The form of the question is not exactly right.

MR. GOLDSTEIN: I will rephrase the question, your Honor.

You met the informant subsequent to his arrest in Florida?

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jqs

Hall-Cross

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A Yes sir.

Q Was this through communication with another agent?

A Yes.

Q Is it not correct that they told you the informant was willing to work with you in exchange for possible favorable treatment for his case in Florida?

A That is correct.

Q He did work with you, is that correct?

A Yes, he did.

Q But for this informant you would not have known of the alleged conspiracy between Mr. Durkin and Mr. Murray, is that right?

A That is correct.

Q Other than the communications the informant gave you you had no independent evidence as to this alleged conspiracy, did you?

A I am not exactly sure what you mean by that.

(Question read)

A Our evidence was based on the informant's word.

Q Based solely on his confidential communication, is that correct?

A Yes sir.

Q What is the name of that informant?

MR. HEMLEY: Objection.

MR. GOLDSTEIN: Under the decision of Rivera against the United States --

THE COURT: I make the same ruling as I did previously.

MR. GOLDSTEIN: The informant told you that the connection was arriving at 8:30 at a train station?

A Yes sir.

Q This was at about 4:30 he told you that?

A Yes.

Q Other than what you testified on direct did the informant give you any further detail regarding the incident at the train station?

A Other than what I have testified to?

Q Yes sir.

A Not that I recall.

Q There is what appears to be a leather bag sitting on the table here. Is this what you refer to as a suitcase?

A Yes sir, I believe it is.

Q Would you say this bag is about --

MR. HEMLEY: Could we have this marked for identification please.

((Defendant's Exhibit A marked for identification))

THE COURT: It may for convenience be described

as a leather duffel bag sometimes carried on the shoulder also.

MR. GOLDSTEIN: This is the bag Durkin was carrying, is that right?

A I believe it is.

Q He had it flung over his shoulder, didn't he?

A I don't believe he did.

Q Between 4 o'clock in the afternoon and 8:30 in the evening what did you do as far as this investigation was concerned?

A What did I do?

Q Yes sir.

A I checked the files regarding the name that I had so far, Charles Murray.

Q And you were at your office all this time?

A Yes, I was.

Q Where is your office located?

A 57th Street and 11th Avenue in New York City.

Q What building is that?

A I don't know that it has a name, 555 West 57th Street.

Q And you made no attempt to get an arrest or search warrant, is that correct?

A No sir.

Q How far are you or were you at that time from the nearest federal official who could give you a search or arrest warrant?

A In miles you want to know?

Q In time.

A A 20 minute drive.

Q Would there be a faster way of driving there?

A You mean besides subway?

Q Yes sir.

A I have never taken the subway, I don't know how long it would take.

Q Where would the nearest official have been?

A It would have been Southern District of New York, Foley Square.

Q In this building?

A Yes.

Q What day of the week was this?

A I don't remember.

Q Was it a weekday or weekend?

A Weekday.

Q Is there a duty judge or magistrate available 24 hours a day in the Southern District of New York to give search warrants or arrest warrants?

A Is there a duty magistrate --

1 jqs
2 Q Available at all times day and night to issue
3 warrants?

4 A Yes.

5 Q Did you or anyone else in your office make an
6 attempt to contact that officer?

7 A No sir.

8 Q You had until 8:30 to get a warrant, is that
9 correct?

10 MR. HEMLEY: Objection.

11 THE COURT: What would you suggest this man could
12 have known a warrant would call for under the circumstances
13 or are we going through a semantic exercise here?

14 MR. GOLDSTEIN: No more than the probable cause
15 he would use to arrest without a warrant.

16 THE COURT: Go ahead.

17 MR. GOLDSTEIN: Do you know Agent Sullivan?

18 A Yes, I do.

19 Q Was he working with you in this case?

20 A Yes sir.

21 Q Was he present at the scene when the arrest was
22 made?

23 A Yes sir.

24 Q You went to the station, to Penn Station, and
25 set up a surveillance?

1 A That is correct.

2 Q And you got there about 8:15?

3 A Yes.

4 Q Did anyone follow Murray from his home to the
5 station?

6 A No.

7 Q Did anyone see him driving, surveill him while
8 he was driving to the station?

9 A No sir.

10 Q Do you know any reason why Agent Sullivan stated
11 that he was surveilled while driving to the station?

12 A No sir, I don't, unless he knows information that
13 I don't have. I don't know.

14 Q Agent Sullivan brought the complaint in this
15 case, did he not?

16 A I don't know.

17 MR. GOLDSTEIN: Does the clerk have the original
18 complaint?

19 MR HEMLEY: I will stipulate as to the accuracy
20 of the document, if you like.

21 The government will stipulate as to the accuracy
22 of this document once it is marked for identification.

23 (Defendant's Exhibit B marked for identification.)

24 (Defendant's Exhibit C marked for identification.)

1 MR. GOLDSTEIN: By the way, you were given a
2 description of the individual that was allegedly meeting
3 Murray, weren't you?
4

5 A No, I was not.

6 Q I show you this page 2 of what has been marked
7 Exhibit B and ask you to read into the record paragraph 2
8 of the overt acts.

9 MR. HEMLEY: May we have it offered in evidence
10 just as a formality before he reads from it?

11 MR. GOLDSTEIN: May it please the Court, I have
12 here what is marked Defendant's Exhibit B which is the
13 complaint in this case.

14 MR. HEMLEY: The government has no objection. I
15 just want it for the record.

16 (Defendant's Exhibit B received in evidence.)

17 THE COURT: I will take notice of what is in there.
18 You don't have to have him read it.

19 MR. GOLDSTEIN: Yes sir.

20 I show you document, Defendant's Exhibit C, is
21 that your handwriting?

22 A No, it is not.

23 Q You have read that. Do you recall making that
24 statement to anyone?

25 A I don't recall making that statement to anyone,

no.

MR. GOLDSTEIN: If it please the Court, I would offer this in to evidence, the part of the 3500 information given to the defense by the government.

MR. HEMLEY: The government objects, your Honor. The witness is not competent to identify that document.

THE COURT: Whose handwriting is this, is this yours?

THE WITNESS: No, your Honor.

THE COURT: Objection sustained.

MR. GOLDSTEIN: At the time of the arrest were Mr. Murray and Mr. Durkin taken from the automobile?

A Yes sir.

Q And they were immediately handcuffed, were they not?

A I believe so.

Q And they were immediately placed in the rear of the government vehicle, is that correct?

A Yes sir. I don't recall if it was one government vehicle or a separate government vehicle.

Q Do you recall who placed Mr. Durkin in a vehicle?

A Sir, I believe I placed him in a vehicle.

Q Do you recall who placed Mr. Murray in a vehicle?

A Agent Lightcap.

1 Q How many agents were there?

2 A About three other agents. I don't remember.

3 Q At one point Mr Murray's vehicle was taken into
4 custody and driven somewhere, is that correct?

5 A Yes sir.

6 Q After they were placed in handcuffs and secured
7 as far as your own personal safety was concerned, you then
8 took the items out of the car, did you?

9 A Yes sir.

10 Q And Durkin and Murray were already in the official
11 government vehicles at that point, weren't they?

12 A I believe so.

13 Q What did you take out first, the guitar case or
14 the suitcase?

15 A I don't know. I didn't handle either one.

16 Q Nonetheless they were taken out of the car at
17 that time, is that correct?

18 A I believe they were taken out.

19 Q Were they opened on the highway at or near the
20 point of arrest or were they opened back at your headquar-
21 ters for the first time?

22 A Before we got to headquarters. I don't remember
23 if it was on the highway.

24 Q Either inside of the car or outside of the car?

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A On the highway.

Q Do you recall whether they were opened at the site or the point where the defendants were arrested or some later point on the way downtown?

A I really couldn't tell you.

Q Or uptown.

A I couldn't tell you.

Q But they were opened after the defendants were physically in custody, handcuffed and placed in the car, is that right?

A Yes.

Q What was inside the guitar case?

A All I saw was a guitar.

Q Did you pick up these two bags at any point before they were opened?

A No, I don't believe so.

Q What agents picked them up before they were opened?

A Agent Cremin.

Q And he picked them up before they were opened by whoever opened them, is that right?

A He opened them so I am assuming he picked them up.

Q Did you pick them up at any time?

1 A I believe so.

2 Q What was their weight approximately?

3 A One bag was approximately ten pounds or maybe
4 twelve pounds. The other bag, the guitar case was -- I
5 don't know, approximately five pounds.

6 Q Nowhere near 100 pounds, isn't that right?

7 A Twelve and five.

8 Q That is 17.

9 A Yes sir.

10 Q The first time you heard of Durkin or Murray in
11 connection with this case was the 14th of August, is that
12 correct?

13 A Yes.

14 Q Does the date of August 6, 1973 have anything to
15 do with this case?

16 A I don't remember. The question you just asked,
17 the first time I heard of Mr. Murray was on that date?

18 Q Yes sir.

19 A I don't know if that was the first day that the
20 informant told me about this man named Charlie. It may
21 have been the day before it.

22 Q The 13th of August?

23 A Yes.

24 Q But not a week before?

1 A I don't believe so.

2 Q And the information you had as to the conspiracy
3 was not on August 6, but either August 13 or August 14, is
4 that correct?
5

6 A Yes, that is correct.

7 Q And, sir, can you explain why Agent Sullivan in
8 the complaint alleged the conspiracy began from August 6,
9 1973?

10 A Yes, I can.

11 MR. HEMLEY: Objection.

12 MR. GOLDSTEIN: How can you?

13 A Because this girl that we mentioned before by the
14 name of Billie is also involved in this conspiracy. The
15 informant knew her and was talking with her, I believe --
16 and you would have to ask the informant about this -- but
17 I believe he was talking with her approximately a week
18 prior to that.

19 Q You don't know this as a fact, do you?

20 A No, I don't.

21 Q This is just an educated guess on your part?

22 A It is not a guess. It is a recollection on my
23 part.

24 Q And she was talking to this Charlie about this
25 conspiracy at this time?

1 A The informant had spoken to this girl by the name
2 of Billie before that date. I don't remember exactly when,
3 but I am giving it to you as a possible explanation for the
4 earlier date as a beginning of this conspiracy.
5

6 Q That is just a possible explanation, you are not
7 certain?

8 A No, I am not.

9 MR. GOLDSTEIN: No further questions.

10 REDIRECT EXAMINATION

11 BY MR. HEMLEY:

12 Q You stated, Agent Hall, that you heard the name
13 Charles Murray prior to August 14. Would you explain for
14 us in what context you had heard that name and what connec-
15 tion you drew between the information you gained prior to
16 August 14 and the information you gained on August 14?

17 A I heard his name mentioned in connection with a
18 hashish case involving some bear cages. When his name
19 came up in this particular case here the name had some
20 significance because I had already heard of the name.

21 Q How soon after the arrest of the two defendants
22 was made on August 14 were the bags opened? In minutes,
23 that is.

24 A Within minutes. Within one or two minutes, I
25 would imagine.

MR. GOLDSTEIN: Objection, your Honor. What he imagines is not evidence.

MR. HEMLEY: Do you recall?

A To the best of my recollection it was within one to three minutes after the arrest.

Q What were you doing at the time of the arrest?

A I placed Mr. Murray under arrest.

Q Were you able to observe --

A Excuse me, I placed Mr. Durkin under arrest.

Q Were you able to see Agent Cremin and observe his activities during the entire time that the arrest was taking place?

A No, I didn't observe all his activities, no.

Q Do you know for a certain fact that the defendants were handcuffed and seated in the vehicle at the time Agent Cremin opened what has been marked as Defendant's Exhibit A ?

A No, I don't.

Q Might it have taken place prior to the time they were handcuffed and seated in the vehicle?

A Yes.

MR. HEMLEY: No further questions.

RECROSS EXAMINATION

BY MR. GELLER:

MR. GELLER: Agent Hall, you stated that you heard the name Charles Murray before August 14, correct?

A Yes.

Q That was in connection with something you called the bear case?

A Yes.

Q That was a case in 1972?

A Right.

Q When your informant told you about Charlie in the afternoon of August 14 you didn't know that that Charlie was a man named Charles Murray?

A No.

Q You made no connection between the name Charlie and Charles Murray?

A No sir.

Q You only knew Mr. Murray's name. You learned his name was Charles Murray after you arrested him?

A Yes.

Q So when you were working on this man named Charlie in no way in your mind at all did you associate Charlie with anyone named Charles Murray?

A No, but I knew the name Charles Murray before I arrested him.

Q You know many names, don't you? You know many

1 names of people who you are interested in?

2 A Yes.

3 Q When you heard Charlie you didn't know that the
4 Charlie involved with your informant was Charles Murray?

5 A No, but I checked the name out from the telephone
6 number and from the license number and I determined that
7 Charlie was Charles Murray.
8

9 MR. GELLER: No further questions.

10 RECROSS EXAMINATION

11 BY MR. GOLDSTEIN:

12 Q Did you see the bags opened?

13 THE COURT: When are you talking about?

14 MR. GOLDSTEIN: On the highway.

15 MR. HALL: Did I see them opened for the first
16 time?

17 Q Yes.

18 A I don't recall.

19 Q You may step down.

20 (Witness excused)

21 MR. HEMLEY: The government has nothing further
22 at this time, your Honor.

23 MR. GELLER: If both counsel would press our
24 question, we would like to know the name of the informant
25 and, frankly, your Honor, I would like to call him during

1 jqs

2 the course of this proceeding. I think the entire case
3 hinges -- the probable cause is based exclusively on what
4 this informant told agents.

5 THE COURT: Is he available?

6 MR. HEMLEY: Yes, your Honor.

7 THE COURT: Get him.

8 MR GOLDSTEIN: I join in that motion and I would
9 like to have him available for interview.

10 THE COURT: We are going to call him and put him
11 on the stand. We are not going to give continuances. We
12 are going to give you exactly what you ask for. Please,
13 let us have the witness.

14 Your last suggestion makes it very clear to me
15 that you are reserving your determinations as to whether
16 you want to call him or not. The government is now calling
17 him. If you want to interview him after the government is
18 through with him, you can interview him.

19 MR. GOLDSTEIN: I was not looking for a continu-
20 ance or anything like that.

21 D A N I E L M I L L E R, called as a witness by
22 the Government, having first been duly sworn, testified as
23 follows:

24 DIRECT EXAMINATION

25 BY MR. HEMLEY:

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JQS

Miller-Direct

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Q How old are you, Mr. Miller?

A 28.

Q Did you come to know a man by the name of Charles Murray?

A Yes sir.

Q Would you point him out please?

A He is the gentleman to the far right of the table. He is next to you.

Q Would you describe what he is wearing for the record please?

A Tan coat, white shirt, brown striped tie, glasses.

MR. HEMLEY: May the record reflect the identification of the defendant Charles Murray.

Q Did there come a time in August of 1973 when you became a registered cooperating individual of the Drug Enforcement Administration?

A Yes sir.

Q Directing your attention to August 14, 1973 were you then a cooperating individual?

A Yes sir.

Q Further directing your attention to approximately one in the afternoon, did you have a telephone conversation with someone named Billie?

A Yes sir, I did.

2 Q Would you tell us what the contents of that con-
3 versation were please?

4 A Yes sir. She had contacted me and asked me to
5 lend her \$1,000 to get her boyfriend out of jail. I told
6 her at the time that my funds were tied up, that I was try-
7 ing to put together a deal for a quantity of hashish and
8 that I couldn't afford it at the time. At that point she
9 told me that she had a contact who could put this together
10 for me at a better price than the one that I told her I
11 was negotiating for. She left at that point and said that
12 she would be contacting me shortly. Which she did shortly
13 thereafter and told me she was coming by with a friend of
14 hers and that we would go for a ride and discuss it further.

15 Q Where were you at the time of this conversation?

16 A I was at my residence.

17 Q Did there come a time subsequent to the conver-
18 sation when Billie did come to your house?

19 A Yes sir, there was.

20 Q Was anyone with her?

21 A Well, the first time she came by herself. The
22 second time she came she came in and got me and took me
23 out and we got in a yellow Volkswagen that was driven by
24 Mr. Muraay and at that point we drove around the neighbor-
25 hood, talking about the details of the deal.

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Q Did you notice the license plate of the vehicle?

A Yes sir, I did. 1931 LX, I believe.

Q Did Billie introduce you to Mr. Murray with any name?

A Charlie.

Q What happened after the car ride was completed?

A I telephoned Agent Hall.

Q What did you tell him?

A The details of what had transpired and I told him at that point that Charlie had told me that he would return to my residence approximately 4 o'clock in the afternoon with a sample of the 100 pounds that he had contracted for.

Q Did you see Charlie later that afternoon?

A Yes sir, I did.

Q When was that?

A When he came back at approximately 4 o'clock.

Q Did you have any conversation with him at that time?

A Yes sir, I did. We had made arrangements to do it at a motel room in the midtown area and a number of movements and that was the last conversation I had with him personally. I had two telephone conversations with him after that.

Q Did he indicate where he would obtain the hashish

1 he was going to sell you?

2 A He indicated over the telephone when I spoke with
3 him that a friend of his was bringing it into town and he
4 was going to have to pick him up at the station that eve-
5 ning at approximately 3 o'clock.
6

7 Q What did you do after Mr. Murray left your resi-
8 dence at approximately 4 o'clock?

9 A I telephoned Agent Hall.

10 Q At the time he came to your residence at 4 o'clock
11 was anyone with him?

12 A No sir.

13 Q What did you tell Agent Hall when you spoke to
14 him after you had seen Mr. Murray in your residence?

15 A I told him that we had made arrangements to do
16 it in a midtown motel. I suggested the Holiday Inn on
17 West 57th Street and that I was to call Murray at home
18 that evening, if possible, before he left to pick up his
19 friend at the station and tell him what room number I
20 would be in.

21 Q Mr. Miller, you were arrested in Miami Florida
22 for the possession of cocaine on August 1, 1973, is that
23 correct?

24 A That is correct.

25 Q As far as you know that matter is still pending,

1 is it not?

2 A That is correct.

3 Q Prior to August 14, 1973 did you receive any
4 money from the Drug Enforcement Administration in connec-
5 tion with the information you gave to them?
6

7 A No sir.

8 Q Had you given any information to Agent Hall prior
9 to August 14, 1973?

10 A Yes sir.

11 Q Approximately how many meetings and telephone
12 conversations had you had with Agent Hall prior to the 14th
13 of August?

14 A It would be hard to say but a number, quite a
15 few.

16 Q About ten?

17 A If not more.

18 Q Do you know if any arrest resulted from the infor-
19 mation which you gave Agent Hall prior to August 14?

20 A Yes sir.

21 Q How many arrests?

22 A One.

23 Q Were any promises made to you in connection with
24 your testimony in this case?

25 A No sir.

1 jgs

2 MR. HENLEY: I have no further questions, your
3 Honor.

4 THE COURT: Was your cooperation in this case to
5 be called to the attention of the Court in any way?

6 THE WITNESS: I don't know.

7 CROSS EXAMINATION

8 BY MR. GILLER:

9 Q Mr. Miller, had you ever met or spoken to Charles
10 Murray prior to August 14?

11 A I had never been introduced to him formally but
12 I had seen him at the residence of this girl that I knew
13 as Billie on one occasion prior.

14 Q Hadn't you met Mr. Murray at a party at Billie's
15 house?

16 A No sir. I had never been to a party at her house.

17 Q Had you ever been to Billie's house?

18 A Yes sir, I saw him there on one occasion.

19 Q When was that?

20 A Sometime during July, I believe. I am not quite
21 sure.

22 Q Of 1973?

23 A Yes sir.

24 Q On that occasion didn't you have a conversation
25 with Mr. Murray?

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A No sir.

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Q Sir, are you involved in the sale of diamonds or emeralds?

4

5

A Yes sir. Not involved as a business. I was trying to.

6

7

Q Did you ever have a conversation with Mr. Murray about emeralds?

8

9

A No sir.

10

Q Do you know Mr. Murray's wife?

11

A No sir.

12

Q Did you ever meet her?

13

A No sir.

14

Q Do you see that lady sitting in the first row in the back of the courtroom?

15

16

A Yes sir.

17

Q Have you ever seen that lady before in your life?

18

A No sir. Not to my knowledge.

19

Q How old are you?

20

A 28.

21

Q Is it a fair statement that the only time you have ever been arrested is this case in Miami that you told us about?

22

23

A No sir.

24

Q You have had other arrests?

25

2 A Yes sir.

3 Q For what?

4 A Possession of marijuana.

5 Q When was that?

6 A 1968, approximately nine grams and it was lowered.

7 It was dismissed and lowered to disorderly person.

8 Q And you were found guilty?

9 A Yes sir.

10 Q As far as the Miami cocaine were you charged with
11 possession of cocaine?

12 A I never read the charges.

13 Q How many counts were in that indictment?

14 A I don't know. I never saw any indictment.

15 Q Were you arrested in physical possession of
16 cocaine?

17 A No sir, I was not.

18 Q Was cocaine involved in this case?

19 A Yes sir.

20 Q How much cocaine was involved?

21 A I am not sure of the total weight. I believe it
22 was in excess of 500 grams.

23 Q And you knew you were facing substantial sentence
24 in connection with that case, correct?

25 A Yes sir.

Q Regarding your own habits, is it a fair statement that you have used cocaine?

A That I have?

A Yes.

A Well --

Q Did you ever blow coke?

MR. HENLEY: I object, your Honor.

MR. GELLER: The drug usage of the witness I think is relevant.

THE COURT: I think you know the rules not to start any arguments about this thing. Is the terminology a terminology that is understandable or are you objecting to the form of the question?

MR. HENLEY: I am objecting to the form of the question insofar as it asks for a general history of the defendant. I would concede that it may be relevant if he had been using cocaine on the day of this transaction.

THE COURT: Have you been using any cocaine in the last three months?

THE WITNESS: No sir, I have not.

MR. GELLER: Have you been using any drugs in the last three months?

A No sir.

Q When did you stop using drugs?

1 A After Miami.

2 Q When was the Miami arrest?

3 A August 1.

4 Q Is it a fair statement that as of August 1st and
5 prior to August 1st you were using narcotic drugs?

6 MR. HENLEY: Objection.

7 THE COURT: Sustained.

8 MR. GILLER: Have you used any drugs in the last
9 week?

10 A No sir.

11 Q You say that Billie called you on August 14?

12 A That is correct.

13 Q When is the last time you saw Billie prior to
14 August 14?

15 A I saw her on one occasion in a bar in the village
16 and that was the last time I have seen her.

17 Q Didn't you buy a half pound of cocaine from Billie
18 the second week of August?

19 MR. HENLEY: I object.

20 THE WITNESS: No.

21 Q What time did Billie come over to your apartment
22 for the first time on August 14?

23 A For the first time on August 14?

24 Q Yes.

1 A It must have been around midday, around 1 o'clock.

2 Q At that time she told you she had a connection
3 for hash?

4 A No, at that time she asked me to borrow \$1,000
5 to get her boyfriend out of jail.

6 Q And you said no?

7 A I said that I couldn't. My money was tied up in
8 a deal for 100 pounds of hashish.

9 Q That was a lie, correct?

10 MR. HENLEY: Objection.

11 THE WITNESS: No.

12 MR HENLEY: I object to the characterization as
13 a lie.

14 THE COURT: The witness said no. You don't have
15 to rephrase it. It has been rejected.

16 THE WITNESS: There was another case.

17 Q Another case where you were assisting the govern-
18 ment?

19 A Yes.

20 MR. HENLEY: I object to any inquiries as to any
21 other case.

22 THE COURT: Don't argue, Mr. Henley. Just say
23 you object and the objection is sustained.

24 Strike out the answer.

1 Q At this first session when Billie was in your
2 apartment did she mention the name Charles Murray?
3

4 A No, she didn't.

5 Q Did she mention the name Charlie?

6 A Yes, she did.

7 Q You say she left your apartment and she came back
8 the second time with Mr. Murray?

9 A That is correct.

10 Q From the first time you saw Billie and up until
11 the time she came back with Mr. Murray had you contacted
12 Agent Hall?

13 A Yes, I did.

14 Q What time did you call Hall for the first time?

15 A I am not sure of the exact time. It was after
16 she had left.

17 Q When she came back the second time she went into
18 your apartment?

19 A Correct.

20 Q And got you out?

21 A Yes sir.

22 Q And you went into Murray's car?

23 A That is correct.

24 Q Was there a young lady living with you at that
25 time?

1 A No sir.

2 MR. LIMLEY: Objection.

3 MR. GELLER: There was no woman, no girl in the
4 apartment?
5

6 A It was a large studio store front. There was a
7 young lady there.

8 Q Was she your girlfriend?

9 A Yes sir.

10 Q Was she present -- what is her name?

11 MR. HEMLEY: Objection.

12 THE COURT: Sustained.

13 MR. GELLER: Was she present at 2 o'clock when
14 Billie came in and got you out to go into Murray's car?

15 A No sir, she was not.

16 Q She wasn't in the loft?

17 A No sir.

18 Q Was she in the loft at 4 o'clock when Murray had
19 this conversation with you?

20 A Yes sir.

21 Q Was she in the loft at 1 o'clock when Billie came
22 in and spoke to you for the first time?

23 A No sir, she was not.

24 Q When you got into Murray's car and drove around
25 did Billie drive around with you?

1 A Yes sir.

2 Q So you, Murray and Billie were in the car when
3 the hash deal was discussed?

4 A That is correct.

5 Q And the agreement was that Murray would return to
6 your apartment at 4 o'clock with a sample?

7 A That is correct.

8 Q Did he come back at 4 o'clock?

9 A That is correct.

10 Q Where is that sample?

11 A I flushed it down the toilet.

12 Q How large a sample was it?

13 A I suppose about two grams.

14 Q Did anyone instruct you to flush it down the
15 toilet?

16 A No sir, but Agent Hall didn't instruct me to give
17 it to him and I didn't want it around the place.

18 Q Did you advise Agent Hall when you spoke to him
19 before 4 o'clock that it was the agreement for Murray to
20 bring you a sample?

21 A Yes sir, I did.

22 Q In other words, Hall had knowledge that a sample
23 was on the way?

24 A That is correct.

1
2 MR. HEMLEY: Objection.

3 MR. GELLER: And he left you no instructions
4 regarding this sample?

5 A No sir.

6 Q Did you speak to Jeffrey Hall before you flushed
7 the sample down?

8 A No.

9 Q Did you taste the sample, sir? Do you understand
10 my question?

11 A I understand your question.

12 Q Did you taste the sample?

13 A I just took it.

14 Q You just took it and looked at it?

15 A Yes.

16 Q Isn't the purpose of a sample when it is given
17 to test the effectiveness or the potency of a particular
18 drug?

19 A Not necessarily.

20 MR. HEMLEY: Objection.

21 THE COURT: The question has been answered. Go
22 ahead.

23 MR. GELLER: When did you tell Agent Hall for
24 the first time that you flushed the sample down the toilet
25 bowl?

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A I don't know whether I told him at all.

Q Did you ever --

A We never discussed the sample other than my telling him that it was being delivered.

Q In other words, up to now, is it a fair statement that you have not told any of the people involved with the government prosecution that this sample was flushed down the toilet?

A I don't remember whether I told them or not. You would have to ask him.

Q Murray left you at about 4:30, correct?

A Probably earlier.

Q About 4 o'clock?

A Yes.

Q Murray then told you a man he met for the first time that day really that his connection was arriving in Penn Station at 8 o'clock?

A He did not mention which station.

Q What did he tell you?

A He told me he had to pick up his friend at the station and I told him that if I had a room number to supply before he left I would call him and give it to him otherwise I would meet him in the bar in the lobby of the Holiday Inn.

1 Q Murray never told you Penn Station? .

2 A He never mentioned a specific station.

3 Q You told us before -- incidentally, did Murray
4 tell you this information about the station in person or
5 via a telephone call?
6

7 A Over the telephone. He told me he was picking
8 a friend up at the station.

9 Q In other words, after Murray left you at 4 o'clock
10 he called and told you that he was meeting a friend of his
11 at a station?

12 A He said he was picking up his friend at the sta-
13 tion at 8 o'clock.

14 Q And that information was given to you on the
15 phone?

16 A That is correct.

17 Q What time did you get that information?

18 A Initially it must have been about -- I can't
19 remember exactly what time. I can give you an approxima-
20 tion.

21 Q Approximately what time?

22 A Between 6 and 7 o'clock.

23 Q Do you know where Murray was calling from?

24 A I assume from his home. I called him back shortly
25 thereafter to try to ascertain which station and he

1 answered so I assume it was from his home.

2 Q In other words, Murray called you between 6 and
3 7 and told you he was meeting his friend at a station?

4 A Right, and wanted to know if I had gotten a room
5 yet and I said I was held up, I hadn't but I would be
6 leaving for the motel shortly. Then I called Agent Hall.

7 Q What did you tell Agent Hall?

8 A I told him he was picking up a friend at the
9 station.

10 Q Did you tell Agent Hall it was Penn Station?

11 A How could I tell him it was Penn Station? I
12 didn't know.

13 Q Did you tell Agent Hall that you didn't know
14 which station it was?

15 A I just told him what Murray told me.

16 Q Did Agent Hall ask you is it Penn Station or
17 Grand Central Station?

18 A He asked me to call the defendant back and try
19 to ascertain what station it was, which I did.

20 Q What did Murray tell you?

21 A I didn't ask him directly which station it was,
22 I just told him that if I didn't have the room number by
23 the time he left to pick his friend up, it would be sense-
24 less for you to drive all the way back to your residence
25

1 to wait for me to call and he said no, that is all right,
2 I can meet you in the lobby at the bar or you can call my
3 wife and give her the room number because I am picking my
4 friend up in the neighborhood and I will get him a motel
5 within the immediate vicinity of where he will be.
6

7 Q So --

8 A I relayed this to Agent Hall and at that point
9 that was it.

10 Q Is it a fair statement that Murray at no time
11 told you he was meeting his connection at Penn Station?

12 A He never told me he was meeting him at Penn
13 Station.

14 Q Is it a fair statement that at no time did you
15 tell Agent Hall or any other federal agent that Murray told
16 you he was meeting his connection at Penn Station?

17 A Penn Station was never mentioned.

18 MR. GELLER: I have no further questions, your
19 Honor.

20 THE COURT: Was there any mention of a meeting?

21 THE WITNESS: Yes sir.

22 THE COURT: What was the mention?

23 THE WITNESS: As I stated before, your Honor, it
24 was that Mr. Murray was picking his friend up at the station.
25 The station, I assume being either one of the two major

train station.

THE COURT: All right. Anything else?

MR. HEMLEY: I would ask on redirect, unless Mr. Goldstein is going to inquire on cross examination.

THE COURT: Do you have any questions, Mr. Goldstein?

MR. GOLDSTEIN: One or two, your Honor.

THE COURT: Do you want an opportunity to interview this witness apart from your questions?

MR. GOLDSTEIN: No sir.

CROSS EXAMINATION

BY MR. GOLDSTEIN:

Q Was it your testimony --

THE COURT: Do you want any out-of-court opportunity to interview this witness?

MR. GOLDSTEIN: I said no sir, I am sorry, sir, I speak softly.

Mr. Miller, was it your testimony that Charlie told you his friend was coming into town with the 100 pounds?

A That is correct.

Q And you also testified that Charlie gave you a sample?

A That is correct.

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Q And he gave you a sample at 4 o'clock?

A That is correct.

Q And his friend was arriving at 8:30?

A I didn't know that at 4 o'clock.

Q You knew at 4 o'clock his friend wasn't there yet,
right?

A No. I didn't know anything at 4 o'clock.

Q You didn't know the hashish was not in town at
4 o'clock?

A No sir.

Q What time was it he told you?

A On the phone conversation that I mentioned to
you or to the other gentleman, sometime between 6 and 7
that evening he mentioned that there was another party in-
volved, that he had to pick him up at the train station
around 8.

Q You made the arrangements for the deal with a
motel at what meeting?

A We discussed doing it at a motel at the 4 o'clock
meeting.

Q That's the meeting where you got the sample?

A That is correct.

Q At that point did you know where the 100 pounds
were?

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A No sir. I assured that it was accessible in New York City.

Q What did the sample look like?

A It looked like greenish-brown.

Q Did it look like hashish?

A Yes sir.

Q Did you smoke it?

A No sir. I smelled it and crumbled it and rubbed it to ascertain what type of press was used on it.

Q Did you put it in your mouth to taste?

A No sir.

Q What do you mean by what kind of press was used on it?

A Water press --

MR. HENLEY: Objection.

MR. GOLDSTEIN: How can you tell? Are you an expert?

MR. HENLEY: Objection.

THE COURT: Can you tell? Are you able to tell?

THE WITNESS: Yes sir.

THE COURT: That is sufficient.

MR. GOLDSTEIN: Where were you arrested, in Florida?

A Yes sir.

1 jgs
2 Q Were you released on bail the same day as your
3 arrest?

4 A Following the weekend.

5 Q How many days were you in jail?

6 A Three, sir.

7 Q Did you immediately come back to New York from
8 Florida?

9 A That is correct.

10 Q When did you first meet Agent Miller? I am
11 sorry, Agent Hall.

12 A Upon my arrival in New York City.

13 Q Four days after your arrest, is that correct?

14 A Something like that, three or four.

15 Q So it would be August 5th or 6th that you met
16 him?

17 A Yes sir.

18 Q That is when you first started working for him as
19 an agent?

20 A Yes sir.

21 Q At whose suggestion did you meet him?

22 A At the suggestion of Agent Menendez in Miami.

23 Q Do you have an attorney in this Florida case?

24 A No sir, I don't.

25 Q Has the case come to trial?

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Miller-Cross

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A No sir.

Q Have you been arraigned in that case?

A No sir.

Q Do you know if you have been indicted in that case?

A No sir, I don't.

Q Have you had a probable cause hearing in that case?

A No sir, I haven't.

Q Has the government advised you as to whether you will be indicted in that case?

A No sir, they haven't.

Q Has the government advised you that if you cooperate in this case they might forget about the case in Florida?

A No sir.

Q What did they tell you as regards your cooperating with them?

A Very little.

Q What did they tell you as regards your cooperating with them?

A That it couldn't hurt.

Q Who told you that it couldn't hurt?

A The agents in Florida.

1 Q What if anything did Agent Hall tell you about
2 your cooperation?
3

4 A He hasn't told me anything about it.

5 Q Did Agent Menendez instruct you to meet with
6 Agent Hall?

7 A I beg your pardon?

8 Q Did Agent Menendez instruct you to meet with
9 Agent Hall?

10 A He came to New York with me and introduced me to
11 Agent Hall.

12 Q On the same plane?

13 A Yes sir.

14 Q What if anything did you discuss regarding your
15 cooperation on the plane ride?

16 A There were no promises made.

17 Q What if anything did you discuss at any time
18 with federal agents prior to meeting Agent Hall as regards
19 your cooperating?

20 A There was no discussion of any favoritism on my
21 behalf at any point.

22 Q They told you it couldn't hurt though, is that
23 right?

24 A No, they didn't tell me that. I just assumed
25 that myself.

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Q From what they told you did you make that assumption?

A No.

Q Are you saying they told you nothing at all about what benefit it would be for you to cooperate with the government?

A Not specifically. Only that it would be a benefit. There were no promises made.

Q They told you it would be to your advantage?

A That is correct.

Q What else did they tell you?

A That is all.

Q Didn't you say they told you that it wouldn't hurt?

THE COURT: He said he figured it out for himself.

THE WITNESS: Advantage and not hurting are pretty much the same.

Q What did Agent Hall tell you about your cooperating?

A He made no promises.

Q Did he offer to pay you money?

A Not on this specific case, no sir.

Q You gave information in one case before this one, is that correct?

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Miller-Cross

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A That is correct.

Q How many people were arrested in that case?

A The one prior to this one?

Q Yes.

A One.

Q How many people were involved in that case?

A One.

Q Were there four people involved in that other case?

A No sir.

MR. HEMLEY: Objection.

MR. GOLDSTEIN: What was the subject matter of that case?

MR. HEMLEY: Objection.

THE COURT: Sustained.

MR. GOLDSTEIN: What is your bail in Florida?

A O.R.

Q About a pound of cocaine was involved in Florida roughly?

A That is correct.

Q And you are charged with possession with attempt to deliver cocaine?

A I didn't read any charges.

Q Were you given any charges?

1 A No sir, I wasn't.

2 Q Did you meet the agents and discuss cooperating
3 where you were arraigned and bail was set or afterwards?
4

5 A I am not sure. I believe it was afterwards.

6 Q Was it part of your cooperation with the federal
7 agents that bail was set at O.R?

8 MR. HENLEY: Objection.

9 MR. GOLDSTEIN: If you know.

10 THE COURT: Just speak of what you know personally,
11 don't speculate. Do you know anything about it personally?

12 THE WITNESS: Yes sir.

13 THE COURT: What is the answer to his question?

14 THE WITNESS: Yes.

15 MR. GOLDSTEIN: In other words, your bail was
16 set at O.R. because you cooperated, is that correct?

17 A That is correct.

18 Q In your cooperation did you name the individuals
19 that you were involved with in this cocaine transaction?

20 MR. HENLEY: Objection.

21 THE COURT: Overruled.

22 THE WITNESS: Yes, I did.

23 Q That is the one individual who you gave to the
24 government before this case, isn't it?

25 A That is correct.

Q This was the first case in which you gave information resulting in an arrest other than the one in which you were personally involved, is that correct?

A That is correct.

MR. GOLDSTEIN: No other questions.

REDIRECT EXAMINATION

BY MR. HENLEY:

Q Have you had any contact with Mr. Murray since the date of his arrest?

A Yes.

Q Has he made any threats to you?

A The Monday following his arrest which was the first day I came back to the city from Fire Island Mr. Murray showed up at my residence at 48 Grant Street and informed me that they --

MR. GELLER: I object to this as totally irrelevant on the issue of probable cause. I don't see it at all.

THE COURT: Let us terminate it at that point.
Sustained.

MR. HENLEY: No further questions.

THE COURT: You may step down.

(Witness excused)

THE COURT: Any other proof?

MR. HENLEY: The government has no other proof.

1 THE COURT: What about the defendants?

2 MR. GOLDSTEIN: I would call Mr. Henley.

3 THE COURT: We don't ordinarily do that in this
4 district unless there is probable cause for its require-
5 ment. It is considered an imposition on the bar. I suggest
6 to you before you make up your mind whether you want to
7 call him that you have a discussion with Mr. Henley to find
8 out if there is some stipulation which you in good conscience
9 as an attorney can recommend to your client and which as a
10 matter of good taste you ought to follow. At that point we
11 will discuss whether he takes the stand or not.
12

13 MR. GOLDSTEIN: Yes sir, I would prefer to do that
14 myself.

15 (Pause)

16 MR. GELLER: Your Honor, I think perhaps the
17 government and both counsel would enter into the following
18 stipulation, that Mr. Henley would testify, if called, that
19 he had a telephone conversation with Jeffrey Hall regarding
20 this case and it's Mr. Henley's recollection, he believes
21 that Mr. Hall told him that the informant in this case had
22 made three cases before that involving six defendants and
23 involving two seizures of cocaine and since then the infor-
24 mant has made several cases. Mr. Henley believes that that
25 is what the conversation was and that day, your Honor, Mr.

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2 Henley, the same day of this telephone conversation, he
3 reduced to writing what I just read into the record.

4 THE COURT: All right.

5 Is there any other proof on behalf of the defen-
6 dants?

7 MR. GELLER: I have no other proof, your Honor.

8 MR. GOLDSTEIN: I have no other proof.

9 THE COURT: Both sides rest?

10 MR. HENLEY: The government rests.

11 MR. GELLER: The defendant rests.

12 MR. GOLDSTEIN: I rest, your Honor.

13 MR. GELLER: May we have the stipulation or
14 rather C for identification received in evidence?

15 THE COURT: Yes.

16 (Defendant's Exhibit C received in evidence.)

17 THE COURT: The decision of the Court on the
18 motions to suppress is as follows: On August 14, 1973
19 the defendants were arrested approximately a block or two
20 from the Pennsylvania RR Station in New York City. The
21 defendant Murray drove to the station area and parked and
22 the defendant Durkin came from the Pennsylvania Station
23 carrying a brown suitcase. Durkin entered the car and
24 together they drove off with the agents trailing behind
25 them. The defendants were stopped at about 32nd Street

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and 9th Avenue in New York City and arrested and the officers at that time took possession of and searched the suitcase which yielded contraband and cash. The defendants now move to suppress the contraband and for return of the cash. Probable cause to make an arrest may derive from a reliable informant's tip where independent police corroboration of substantial detail contained in the tip compel the conclusion that the informant's information came from his close contact and personal observation of the defendant.

Here a registered cooperating individual of proven reliability communicated with the police and furnished information that one Charlie had made an offer to sell him a quantity of hashish.

Details of a meeting to take place that day between the informant and Charlie and the time and manner of Charlie's arrival at the meeting, his type of auto conveyance, the phone number at which he could be reached were all furnished, checked out, provided accurately and confirmed that they related to a Charlie and indeed to Charles Murray or his wife, Patricia Murray.

Later the officers were advised that Charlie's source was to arrive in the vicinity of or at the RR station that evening. Surveillance of the informant at the station area resulted in observing the defendant Durkin

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2 emerging from the station area and walking to and entering
3 and driving away in Murray's car. He had with him a duffel
4 bag and a musical case.

5 The officers followed and an arrest and search
6 occurred. Murray and Durkin were arrested and the duffel
7 bag yielded contraband and about \$2,000 in cash.

8 Under all the facts and circumstances I find and
9 conclude that there was ample probable cause for the arrest
10 and search incident thereto. The motions of the defendants
11 to suppress are each denied.

12 That leaves motions for discoveries and particu-
13 lars and I take it that those motions are rooted by volun-
14 tary disclosure, is that correct?

15 MR. GELLER: That is basically correct, yes sir.

16 THE COURT: Those motions will be enforced accor-
17 dingly.

18 MR. GELLER: The only point is I have asked the
19 government to furnish a copy of Mr. Miller's criminal record.

20 MR. HENLEY: There is no objection but it is not
21 available. I had disclosed to defense counsel the con-
22 tents as the government understands them.

23 THE COURT: That is sufficient under the circum-
24 stances if you haven't got an actual copy of that.

25 MR. GELLER: The problem is that I asked for this

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2 six weeks ago.

3 THE COURT: There is no problem because he says
4 he hasn't got it. He is furnishing you the substitute
5 which is the information the government has and you are
6 at liberty to probe it further should the party be called
7 as a witness on the stand.

8 I think that takes care of the pre-trial matters
9 so we will impanel the jury.

10 It will take about ten minutes to get the jury.
11 We will stand in recess until that time. My present inclina-
12 tion is that we will impanel a jury and then start the
13 actual trial at 2 o'clock.

14 MR. HENLEY: May I advise the government's wit-
15 nesses of that then, your Honor?

16 THE COURT: Yes.

17 (Recess)
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WITNESS INDEX

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